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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, prepared pursuant to Council resolution 25/13. In the report, the Special Rapporteur assesses the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons.

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Contents

		Page
I.	Introduction	3
II.	Activities relating to the mandate	3
III.	Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment	3
	A. Legal framework	3
	B. Torture and ill-treatment of women, girls, and lesbian, gay, bisexual and transgender persons in detention	5
	C. Trafficking in women and girls	11
	D. Torture and ill-treatment of women, girls, and lesbian, gay, bisexual, transgender and intersex persons in health-care settings	11
	E. Rape and sexual violence	14
	F. Domestic violence	15
	G. Harmful practices	16
	H. Access to justice and reparations	18
IV.	Conclusions and recommendations	19

I. Introduction

1. The present report has been prepared pursuant to Human Rights Council resolution 25/13. In an addendum (A/HRC/31/57/Add.1), the Special Rapporteur makes observations on cases sent to Governments between 1 December 2014 and 30 November 2015, as reflected in the communications reports of special procedures mandate holders (A/HRC/29/50, A/HRC/30/27 and A/HRC/31/79). During the period under review, the Special Rapporteur visited Georgia (A/HRC/31/57/Add.3) and Brazil (A/HRC/31/57/Add.4) and conducted a follow-up visit to Ghana (A/HRC/31/57/Add.2) with the support of the Anti-Torture Initiative.

II. Activities relating to the mandate

2. On 2 October 2015, the Special Rapporteur delivered a keynote address at a conference in London on the case against backsliding on the torture ban.

3. On 5 and 6 November 2015, the Special Rapporteur held expert consultations in Washington, D.C. on gender and torture, the focus of the present report.

4. From 29 to 30 October and 13 to 15 December 2015, the Special Rapporteur attended regional meetings of the Convention against Torture Initiative held in San José and Marrakech, Morocco.

III. Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment

5. In the present report, the Special Rapporteur assesses the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual and transgender and intersex persons. Historically, the torture and ill-treatment framework evolved largely in response to practices and situations that disproportionately affected men. The analysis has thus largely failed to have a gendered and intersectional lens, or to account adequately for the impact of entrenched discrimination, patriarchal, heteronormative and discriminatory power structures and socialized gender stereotypes. He highlights in the report how the torture and ill-treatment framework can be more effectively applied to qualify human rights violations committed against persons who transgress sexual and gender norms; identify gaps in prevention, protection, access to justice and remedies; and provide guidance to States on their obligations to respect, protect and fulfil the rights of all persons to be free from torture and ill-treatment.

A. Legal framework

6. The Special Rapporteur recalls the need to apply the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in a gender-inclusive manner (A/55/290). Full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied.

7. Gender-based violence, endemic even in peacetime and often amplified during conflict, can be committed against any persons because of their sex and socially constructed

gender roles. While women, girls, lesbian, gay, bisexual and transgender persons, sexual minorities and gender-non-conforming individuals are the predominant targets,[1] men and boys can also be victims of gender-based violence, including sexual violence stemming from socially determined roles and expectations. As noted by the Committee against Torture in its general comment No. 2 (2007) on the implementation of article 2 of the Convention, gender-based crimes can take the form of sexual violence, other forms of physical violence or mental torment.

8. The purpose and intent elements of the definition of torture (A/HRC/13/39/Add.5) are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality (A/HRC/7/3). The definitional threshold between ill-treatment and torture is often not clear. A gender-sensitive lens guards against a tendency to regard violations against women, girls, and lesbian, gay, bisexual and transgender persons as ill-treatment even where they would more appropriately be identified as torture.

9. Gender-based discrimination includes violence directed against or disproportionately affecting women (A/47/38). Prohibited conduct is often accepted by communities due to entrenched discriminatory perceptions while victims' marginalized status tends to render them less able to seek accountability from perpetrators, thereby fostering impunity. Gender stereotypes play a role in downplaying the pain and suffering that certain practices inflict on women, girls, and lesbian, gay, bisexual and transgender persons. Furthermore, gender intersects with other factors and identities, including sexual orientation, disability and age, that may render a person more vulnerable to being subjected to torture and ill-treatment (general comment No. 2). Intersectional identities can result in experiencing torture and ill-treatment in distinct ways. The torture protection framework must be interpreted against the background of the human rights norms that have developed to combat discrimination and violence against women.

10. States' obligations to prevent torture are indivisible, interrelated, and interdependent with the obligation to prevent other forms of ill-treatment. States have an obligation to prevent torture and ill-treatment whenever they exercise custody or control over individuals and where failure to intervene encourages and enhances the danger of privately inflicted harm (general comment No. 2). States fail in their duty to prevent torture and ill-treatment whenever their laws, policies or practices perpetuate harmful gender stereotypes in a manner that enables or authorizes, explicitly or implicitly, prohibited acts to be performed with impunity. States are complicit in violence against women and lesbian, gay, bisexual and transgender persons whenever they create and implement discriminatory laws that trap them in abusive circumstances (A/HRC/7/3).

11. States must exercise due diligence to prohibit, prevent and redress torture and ill-treatment whenever there are reasonable grounds to believe that such acts are being committed by private actors. This includes an obligation to prevent, investigate and punish acts of violence against women (A/47/38).[2] Indifference or inaction by the State provides a form of encouragement and/or de facto permission (general comment No. 2). This principle applies to States' failure to prevent and eradicate gender-based violence.[3] States' failure to protect against prohibited conduct and effectively investigate and prosecute violations

[1] Secretary-General's guidance note on reparations for conflict-related sexual violence (2014).

[2] See also Committee on the Elimination of Discrimination against Women, general comment No. 28 (2010) on the core obligations of States parties under article 2 of the Convention.

[3] Committee against Torture, communication No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision of 21 November 2002.

suggests consent, acquiescence and, at times, even justification of violence.[4] When States are aware of a pattern of violence or the targeting of specific groups by non-State actors, their due diligence obligations are likewise engaged and they are required actively to monitor and review data, apprise themselves of trends and respond appropriately.[5]

12. In *Opuz v. Turkey*, the European Court of Human Rights found that discriminatory judicial passivity and unresponsiveness to domestic violence gave rise to impunity and a climate that was conducive to such gender-based violence, leading to a violation of the prohibition of torture and ill-treatment. Furthermore, when a State knows or should have known that a woman is in danger, it must take positive steps to ensure her safety, even when she hesitates in pursuing legal action (A/47/38). Women's rights to life and physical and mental integrity cannot be superseded by other rights, such as those to property and privacy.[6] States have a heightened obligation to protect vulnerable and marginalized individuals from torture.[7]

B. Torture and ill-treatment of women, girls, and lesbian, gay, bisexual and transgender persons in detention

13. Women, girls, and lesbian, gay, bisexual and transgender persons are at particular risk of torture and ill-treatment when deprived of liberty, both within criminal justice systems and other, non-penal settings. Structural and systemic shortcomings within criminal justice systems have a particularly negative impact on marginalized groups. Measures to protect and promote the rights and address the specific needs of female and lesbian, gay, bisexual and, transgender prisoners are required and cannot not be regarded as discriminatory.

14. In many jurisdictions, the criminalization of abortion, "moral crimes" like adultery and extramarital relationships, and witchcraft and sorcery, among others — offences that are aimed at or that solely and disproportionately affect women, girls and persons on the basis of their perceived or actual sexual orientation or gender identity — besides constituting violations of international human rights law in and of themselves are also a significant factor in prison overcrowding, which has a negative impact on all aspects of detainees' lives and gives rise to ill-treatment or torture.

15. A clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and transphobic hate crimes, police abuse, community and family violence and stigmatization (A/HRC/19/41). At least 76 States have laws that criminalize consensual relationships between same-sex adults, in breach of the rights to non-discrimination and privacy; in some cases, the death penalty may be imposed. Such laws foster a climate in which violence against lesbian, gay, bisexual and transgender persons by both State and non-State actors is condoned and met with impunity. Transgender persons are criminalized in many States through laws that penalize cross-dressing, "imitating the opposite sex" and sex work. Lesbian, gay, bisexual and transgender persons are frequently detained on the basis of laws containing vague and undefined concepts such as "crimes against the order of nature", "morality", "debauchery", "indecent acts" or "grave scandal" (A/HRC/29/23).

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[4] Inter-American Court of Human Rights, *Velásquez v. Honduras*, judgement of 29 July 1988.

[5] Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (art. 11).

[6] Committee on the Elimination of Discrimination against Women, communication No. 2/2003, *A.T. v. Hungary*, Views adopted on 26 January 2005.

[7] Inter-American Court of Human Rights, *Ximenes-Lopes v. Brazil*, judgement of 4 July 2006.

1. Women in detention

16. Women comprise between 2 and 9 per cent of the prison population in 80 per cent of the world's prison systems.[8] Although their numbers are increasing, their needs in detention often go unnoticed and unmet, as prisons and prison regimes are typically designed for men. However, women's unique experiences of prison, as well as the motivations for women's criminal behaviour and their pathways into criminal justice systems are often distinct from those of men (A/68/340). Different incarceration and treatment policies, services and even infrastructure are required to address women's distinct needs and ensure their protection.

17. Many women in the criminal justice system are low-income, minority single mothers; many are victims of domestic violence and abuse and suffer from mental health problems, substance dependencies and overall poor states of health (ibid.). A large number were victims of intimate partner or non-partner violence before their detention, and are at risk of revictimization during arrest and incarceration.

18. A variety of obstacles to accessing justice, including poverty and discrimination, increase the likelihood of women being detained, while systematic or institutionalized societal discrimination contributes to legitimizing and replicating discrimination and violence against women and girls deprived of liberty. Women in prison face multiple forms of discrimination in accessing gender-sensitive and appropriate services across different aspects of the prison regime, such as health care, educational opportunities, rehabilitation services and visiting rights. The adoption of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) filled a gap in international standards by recognizing and addressing the gender-specific needs and circumstances of female offenders and prisoners. The Bangkok Rules supplement but do not replace relevant provisions in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules). Their swift and full implementation by States would contribute significantly to reducing torture and ill-treatment against women in custody, as would gender-sensitive non-custodial measures and the consideration of gender-specific circumstances in sentencing female offenders, including in cases of women convicted of killing abusive domestic partners.[9]

Protection from violence by prison staff and inter-prisoner violence

19. Women and girls are at particular risk of sexual assault by male prisoners and prison staff, including rape, insults, humiliation and unnecessary invasive body searches. Added to the trauma of sexual abuse is the particular stigmatization women in these situations face, for instance for having engaged in extramarital sexual relations or due to the risk of pregnancy or of sexual abuse leading to the inability to have children. Sexual humiliation may occur when male guards watch female prisoners in intimate moments such as dressing or showering. The risk of sexual and other forms of violence can arise during transfers to police stations, courts or prisons, and particularly where male and female prisoners are not separated or when male staff transport female prisoners. Separating male and female detainees and ensuring that female detainees are supervised by female guards and prison officials are key safeguards against abuse. Rule 81 of the Nelson Mandela Rules mandates that male staff must not enter a women's institution unless they are accompanied by a

[8] Office of the United Nations High Commissioner for Human Rights (OHCHR), Women and Detention (2014); Roy Walmsley, World Prison Brief, World Female Imprisonment List, 3rd ed. (2015).

[9] General Assembly resolution 65/228.

female officer. Many States nevertheless fail to adhere to this and other unambiguous requirements. Abuses can occur even when female and male living quarters within an institution are separate, for instance when women's access to such basic necessities as fresh water is circumscribed by their exclusive availability in male quarters (CAT/OP/BEN/1). Furthermore, authorities' failure to prevent inter-prisoner violence amounts to torture or ill-treatment (A/HRC/13/39/Add.3).

20. Women are at particular risk of torture and ill-treatment during pretrial detention because sexual abuse and violence may be used as a means of coercion and to extract confessions. A majority of female detainees worldwide are first-time offenders suspected of or charged with non-violent (drug- or property-related) crimes, yet are automatically sent to pretrial detention. In many States the number of women held in pretrial detention is equivalent to or higher than that of convicted female prisoners, and women are held in pretrial detention for extremely long periods (A/68/340). Women in pretrial detention facilities — which are typically not built or managed in a gender-sensitive manner — tend not to have access to specialized health care and educational or vocational training. They face higher risks of sexual assault and violence when they are held in facilities with convicted offenders and men or are supervised by male guards. According to the Committee against Torture, the undue prolongation of the pretrial stage of detention represents a form of cruel treatment, even if the victim is not detained (A/53/44).

Security and disciplinary measures

21. The use of shackles and handcuffs on pregnant women during labour and immediately after childbirth is absolutely prohibited and representative of the failure of the prison system to adapt protocols to unique situations faced by women (A/HRC/17/26/Add.5 and Corr.1). When used for punishment or coercion, for any reason based on discrimination or to cause severe pain, including by posing serious threats to health, such treatment can amount to torture or ill-treatment.

22. Solitary confinement can amount to torture or ill-treatment when used as a punishment, during pretrial detention, for prolonged periods or indefinitely and on juveniles. Solitary confinement of any duration must never be imposed on juveniles, or persons with mental or physical disabilities, or on pregnant and breastfeeding women, or mothers with young children. (A/66/268). Its use as a measure of retaliation against women who have complained of sexual abuse or other harmful treatment must also be prohibited. Female prisoners subjected to solitary confinement suffer particularly grave consequences as it tends to retraumatize victims of abuse and women suffering from mental health problems. It places women at greater risk of physical and sexual abuse by prison staff and severely limits family visits.

23. Body searches, in particular strip and invasive body searches, are common practices and can constitute ill-treatment when conducted in a disproportionate, humiliating or discriminatory manner. Inappropriate touching and handling amounting to sexual harassment during searches is common, as are routine vaginal examinations of women charged with drug offences. These practices have a disproportionate impact on women, particularly when conducted by male guards. The punishment of women who refuse to undergo strip and invasive searches, for instance by placing them in isolation or revoking visitation privileges, is also common. When conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering, strip and invasive body searches amount to torture.

24. Detention, often for prolonged periods, is sometimes used on the grounds of "protecting" female victims of rape, honour-based violence and other abuses or to ensure that they will testify against the perpetrator in court. This practice further victimizes

women, deters them from reporting rape and sexual abuse and can amount to torture or ill-treatment per se.

Health care and sanitation

25. Most prison health policies and services are not designed to respond to women's specific health needs and fail to account for the prevalence of mental health and substance abuse problems among female prisoners, the high incidence of exposure to different forms of violence, and gender-specific sexual and reproductive health concerns.[10] The provision of appropriate health-care services, including comprehensive, interdisciplinary and rehabilitation-oriented mental health-care programmes, as well as the provision of training and capacity-building to prison staff and health-care personnel to identify specific physical and mental-health needs of female detainees, are key to preventing mistreatment.

26. Of particular concern are a lack of specialist care, including access to gynaecologists and obstetric health-care professionals; discriminatory access to services like harm-reduction programmes; lack of private spaces for medical examinations and confidentiality; poor treatment by prison health staff; failures in diagnosis, medical neglect and denial of medicines, including for chronic and degenerative illnesses; and reportedly higher rates of transmission of diseases such as HIV among female detainees. The absence of gender-specific health care in detention can amount to ill-treatment or, when imposed intentionally and for a prohibited purpose, to torture. States' failure to ensure adequate hygiene and sanitation and to provide appropriate facilities and materials can also amount to ill-treatment or even torture. It is essential to engage in capacity-building and adequate training for detention centre staff and health-care personnel with a view to identifying and addressing women's specific health-care and hygiene needs.

Pregnant women and women with small children

27. Studies suggest that up to 80 per cent of women in prison are mothers.[11] Many female prisoners are single mothers or primary caregivers, and imprisonment can result in considerable hardship for their children. Contact between detained mothers and their children is often difficult due to the remote location of female prisons. Concern about their children is a primary factor leading to the high incidence of mental health problems and self-harm among female detainees.[12] The Bangkok Rules require that parental and child-caring responsibilities be taken into account in the allocation and sentence-planning processes. The best interests of the child, including the need to maintain direct contact with the mother, must be carefully and independently considered by competent professionals and taken into account in all decisions pertaining to detention, including pretrial detention, sentencing and the placement of the child (CRC/C/THA/CO/2).

28. The Special Rapporteur on Prisons and Conditions of Detention in Africa of the African Commission on Human and Peoples' Rights noted in a 2001 report on prisons in Malawi that prisons were not safe place for pregnant women, babies and young children and that it was not advisable to separate babies and young children from their mothers. Even very short periods in detention settings can undermine a child's psychological and physical well-being, compromise cognitive development and result in higher rates of

[10] International Committee of the Red Cross (ICRC) Resource Centre, "Health in prison: looking after women in a man's world", 27 February 2009.

[11] Andrea Huber, "Women in criminal justice systems and the added value of the UN Bangkok Rules", Briefing Paper, Penal Reform International, 2015.

[12] Laurel Townhead, *Pretrial Detention of Women and Its Impact on Their Children* (Geneva, Quaker United Nations Office, 2007).

suicide, self-harm, mental disorders and developmental problems (A/HRC/28/68). Children living in prison with their mothers may be at heightened risk of suffering violence, abuse and conditions of confinement that amount to torture or ill-treatment. In this context, the imprisonment of pregnant women and women with young children must be reduced to a minimum.

Girls in detention

29. Girls in the criminal justice system are at particular risk of experiencing torture and ill-treatment. The majority have prior histories of abuse and violence that serve as primary predictors of their entry into the juvenile justice system. Girls' particular physical and mental health needs often go unrecognized and incarceration itself tends to exacerbate trauma, with girls suffering disproportionately from depression and anxiety and exhibiting a higher risk of self-harm or suicide than boys or adults. Many States lack facilities for separating girls from adults or boys, which significantly increases the risks of violence, including sexual violence.[13] The employment of male guards in girls' facilities significantly increases the risk of abuse, while girls held in remote, segregated facilities are isolated and have limited contact with their families.

30. Many States use the criminal justice system as a substitute for weak or non-existent child protection systems, leading to the criminalization and incarceration of disadvantaged girls who pose no risk to society and are instead in need of care and protection by the State.[14] The Special Rapporteur recalls that the deprivation of liberty of children is inextricably linked with ill-treatment and must be a measure of last resort, used for the shortest possible time, only when it is in the best interest of the child and limited to exceptional cases (A/HRC/28/68). Accordingly, the lack of gender-centred juvenile justice policies directly contributes to the perpetration of torture and ill-treatment of girls. There is an urgent need for policies that promote the use of such alternative measures as diversion and restorative justice, incorporate broad prevention programmes, build a protective environment and address the root causes of violence against girls. Failure to support girls in detention with adequate and complete information about their rights in a comprehensible manner and to provide assistance with reporting complaints in a safe, supportive and confidential manner further aggravates mistreatment.

Migrants and refugees

31. Migrants, asylum seekers and refugees worldwide face grave human rights violations during the migration process. Physical violence, threats and abductions by smugglers, traffickers and organized criminal groups are common. Women and girls are particularly vulnerable to sexual violence, exploitation and slavery along migration routes. Such abuses can amount to torture and ill-treatment and States' failure to properly screen migrants and refugees, identify victims of torture and provide appropriate care and support can retraumatize victims and inflict additional mistreatment.

32. Upon interception or rescue, migrants and refugees tend to be criminalized and detained in substandard and overcrowded conditions amounting to torture or ill-treatment. Unsanitary conditions and inadequate medical care, including lack of access to reproductive care, affect women in particular. Many facilities fail to separate female and male prisoners, leading to heightened risks of sexual violence from other detainees or guards

[13] Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice.

[14] *Safeguarding the Rights of Girls in the Criminal Justice System: Preventing Violence, Stigmatization and Deprivation of Liberty* (United Nations publication, Sales No. E.15.I.10).

(A/HRC/20/24). Lesbian, gay, bisexual and transgender migrants are also vulnerable to abuse on the basis of their sexual orientation and gender identity.[15]

33. The Special Rapporteur recalls that States are prohibited from returning anyone to a situation where there are substantial grounds to believe that the person may be subject to torture or ill-treatment. The prohibition of refoulement is absolute and an important additional source of protection for women, girls, and lesbian, gay, bisexual and transgender persons who fear such treatment in their countries of origin.

2. Lesbian, gay, bisexual and transgender persons in detention

34. Lesbian, gay, bisexual and transgender persons who are deprived of their liberty are at particular risk of torture and ill-treatment, both within the criminal justice system and in other contexts such as immigration detention, medical establishments and drug rehabilitation centres. Criminal justice systems tend to overlook and neglect their specific needs at all levels. Transgender persons tend to be placed automatically in male or female prisons or wards without regard to their gender identity or expression.

35. Lesbian, gay, bisexual and transgender detainees report higher rates of sexual, physical and psychological violence in detention than on the basis of sexual orientation and/or gender identity than the general prison population (CAT/C/CRI/CO/2). Violence against these persons in custodial settings, whether by police, other law enforcement authorities, prison staff or other prisoners, is prevalent (A/HRC/29/23). Fear of reprisals and a lack of trust in the complaints mechanisms frequently prevent lesbian, gay, bisexual and transgender persons in custody from reporting abuses. Their placement in solitary confinement or administrative segregation for their own "protection" can constitute an infringement on the prohibition of torture and ill-treatment. Authorities have a responsibility to take reasonable measures to prevent and combat violence against lesbian, gay, bisexual and transgender detainees by other detainees.

36. Humiliating and invasive body searches may constitute torture or ill-treatment, particularly for transgender detainees. In States where homosexuality is criminalized, men suspected of same-sex conduct are subject to non-consensual anal examinations intended to obtain physical evidence of homosexuality, a practice that is medically worthless and amounts to torture or ill-treatment (CAT/C/CR/29/4).

3. Alternatives to imprisonment and complaint and oversight mechanisms

37. The overuse of imprisonment and disproportionately long sentences in relation to the seriousness of the offence are major causes of overcrowding, resulting in conditions that amount to ill-treatment or even torture. In particular, the non-violent nature of crimes committed by the majority of women and girls and the minimal public risks posed by most female offenders make them ideal candidates for non-custodial sanctions.

38. Adequate and effective complaint and oversight mechanisms are critical sources of protection for at-risk groups that experience abuses in detention. All too often proper safeguards are absent or lacking in independence and impartiality, while fear of reprisals and the stigma associated with reporting sexual violence and other humiliating practices discourage women, girls, and lesbian, gay, bisexual and transgender persons from reporting. In many cases, the vulnerability and isolation of women and girls is compounded by limited access to legal representation, inability to pay fees or bail as a result of poverty, dependence on male relatives for financial support and fewer family visits.

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[15] European Court of Human Rights, application No. 12294/07, *Zontul v. Greece*, judgement of 17 January 2012.

39. All places of detention must be subject to unannounced visits by independent bodies established in conformity with the Optional Protocol to the Convention against Torture. The inclusion of women, lesbian, gay, bisexual and transgender persons and other minority representation on inspection bodies at all levels would help facilitate the reporting of gender-based violence and discrimination and identify cases of torture and ill-treatment.

C. Trafficking in women and girls

40. Human trafficking affects approximately 21 million adults and children worldwide, including 11.4 million women and girls.[16] Human trafficking is a particularly egregious human rights violation and a form of gender-based violence specifically targeting girls and women for exploitation and placing them at high risk of physical and psychological abuse, trauma and disease. Systemic discrimination against women and girls, including lack of access to education, resources and employment, renders them especially vulnerable to trafficking. Trafficked women and girls are routinely subjected to confinement, severe physical and sexual abuse, humiliation and threats for the purposes of commercial sexual exploitation, domestic servitude, forced and bonded labour and organ removal.[17] These practices unequivocally amount to torture and ill-treatment (A/HRC/13/39).

41. While trafficking is perpetrated primarily by private persons, public officials actively acquiesce in or facilitate trafficking operations, for instance by accepting bribes or inducements and certifying or ignoring unlawful working conditions.[18] Furthermore, whenever States fail to exercise due diligence to protect trafficking victims from the actions of private actors, punish perpetrators or provide remedies, they are acquiescent or complicit in torture or ill-treatment (A/HRC/26/18).[19] This is particularly the case whenever the conduct is systematic or recurrent such that the State knew or ought to have known of it and should have taken steps to prevent it, including criminal prosecution and punishment.[20] States must implement a combination of measures to combat trafficking, of which the duty to penalize and prosecute is just one.[21] In designing measures to protect, support and rehabilitate victims of trafficking, States must consider the age, gender and special needs of victims with a view to protecting women and children from revictimization.[22] The criminalization and detention of trafficking victims for status-related offences and "protective" purposes can also amount to ill-treatment.

D. Torture and ill-treatment of women, girls, and lesbian, gay, bisexual, transgender and intersex persons in health-care settings

42. Women are vulnerable to torture and ill-treatment when seeking medical treatment on the basis of actual or perceived non-conformity with socially determined gender roles

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[16] International Labour Organization, "Forced labour, human trafficking and slavery".

[17] Organization for Security and Cooperation in Europe, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-Treatment* (Vienna, 2013).

[18] OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (2010).

[19] See also General Assembly resolution 61/180.

[20] European Court of Human Rights, application No. 73316/01, *Siliadin v. France*, judgement of 26 July 2005.

[21] European Court of Human Rights, application No. 25965/04, *Rantsev v. Cyprus and Russia*, judgement of 7 January 2010.

[22] See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, art. 9.

(general comment No. 2). Discrimination against women, girls, and persons on the basis of sex, gender, real or perceived sexual orientation or gender identity and sex characteristics often underpins their torture and ill-treatment in health-care settings. This is particularly true when seeking treatments such as abortion that may contravene socialized gender roles and expectations. International human rights law increasingly recognizes that abuse and mistreatment of women seeking reproductive health services cause tremendous and lasting physical and emotional suffering, which is inflicted on the basis of gender (A/HRC/22/53). Health-care providers tend to exercise considerable authority over clients, placing women in a position of powerlessness, while the lack of legal and policy frameworks that effectively enable women to assert their right to access reproductive health services enhances their vulnerability to torture and ill-treatment.

Access to abortion and related care

43. Unsafe abortion is the third leading cause of maternal death globally.[23] Where access to abortion is restricted by law, maternal mortality increases as women are forced to undergo clandestine abortions in unsafe and unhygienic conditions. Short- and long-term physical and psychological consequences also arise due to unsafe abortions and when women are forced to carry pregnancies to term against their will (A/66/254). Such restrictive policies disproportionately impact marginalized and disadvantaged women and girls. Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the woman violate women's right to be free from torture and ill-treatment (A/HRC/22/53, CEDAW/C/OP.8/PHL/1). Nevertheless, some States continue to restrict women's right to safe and legal abortion services with absolute bans on abortions. Restrictive access to voluntary abortion results in the unnecessary deaths of women (CAT/C/PER/CO/4).

44. In other cases, women and girls face significant difficulties in accessing legal abortion services due to administrative and bureaucratic hurdles, refusal on the part of health-care workers to adhere to medical protocols that guarantee legal rights, negative attitudes, official incompetence or disinterest (A/HRC/22/53). The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill-treatment.[24] States have an affirmative obligation to reform restrictive abortion legislation that perpetuates torture and ill-treatment by denying women safe access and care. Limited and conditional access to abortion-related care, especially where this care is withheld for the impermissible purpose of punishing or eliciting a confession, remains of concern (A/HRC/22/53). The practice of extracting, for prosecution purposes, confessions from women seeking emergency medical care as a result of illegal abortion in particular amounts to torture or ill-treatment.

Forced and coerced sterilization

45. Forced sterilization is an act of violence and a form of social control, and violates a person's right to be free from torture and ill-treatment. Full, free and informed consent of the patient herself is critical and can never be excused on the basis of medical necessity or emergency when obtaining consent is still possible (A/HRC/22/53). Gender often intersects with other characteristics such as race, nationality, sexual orientation, socioeconomic status, age and HIV status to render women and girls at risk of torture and other ill-treatment in the context of sterilization (CAT/C/CZE/CO/4-5, A/HRC/29/40/Add.2) The European Court of

[23] Guttmacher Institute and World Health Organization, *Facts on Induced Abortion Worldwide* (2012).

[24] European Court of Human Rights, application No. 57375/08, *P and S v. Poland*, judgement of 30 October 2012.

Human Rights found that the sterilization of a Roma woman who consented to the procedure only during delivery by caesarean section violated the prohibition of torture and ill-treatment.[25] Documented practices that may violate the prohibition of torture and ill-treatment include Government-sponsored family planning initiatives targeting economically disadvantaged and uneducated women that shortcut the process of obtaining consent, sterilization certificates required by employers and coerced sterilization of HIV-positive women in some States. Despite the fundamental rights enshrined in the Convention on the Rights of Persons with Disabilities, women and girls with disabilities are also particularly vulnerable to forced sterilization and other procedures such as imposed forms of contraception and abortion, especially when they are labelled "incompetent" and placed under guardianship (A/67/227).

Other abusive practices in health-care and educational settings

46. Women and girls seeking reproductive health care in professional settings are often exposed to severe pain and suffering and coerced into or subjected to unwanted, degrading and humiliating procedures and examinations. In some States, such practices include requiring sex workers to undergo weekly gynaecological examinations and blood tests, and forced or coerced pregnancy testing by means of physical examination or urine testing as a precondition for attending schools and public examinations. Virginity testing and the expulsion of pregnant girls from schools, which often result in long-term harmful consequences, constitute forms of discrimination and ill-treatment.

47. In many States women seeking maternal health care face a high risk of ill-treatment, particularly immediately before and after childbirth. Abuses range from extended delays in the provision of medical care, such as stitching after delivery to the absence of anaesthesia. Such mistreatment is often motivated by stereotypes regarding women's childbearing roles and inflicts physical and psychological suffering that can amount to ill-treatment. The detention of post-partum women in health-care facilities for failure to pay medical bills amounts to ill-treatment by separating new mothers from their children and exposing them to significant health risks.[26]

Lesbian, gay, bisexual, transgender and intersex persons in health-care settings

48. Lesbian, gay, bisexual, transgender and intersex persons are frequently denied medical treatment and subjected to verbal abuse and public humiliation, psychiatric evaluations, forced procedures such as sterilization, "conversion" therapy, hormone therapy and genital-normalizing surgeries under the guise of "reparative therapies". These procedures are rarely, if ever, medically necessary, lead to severe and life-long physical and mental pain and suffering and can amount to torture and ill-treatment (A/HRC/22/53). The criminalization of same-sex relationships and pervasive discrimination against lesbian, gay, bisexual, transgender and intersex persons lead to the denial of health care, information and related services, including the denial of HIV care, in clear violation of international human rights standards such as the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

49. Transgender persons often face difficulties in accessing appropriate health care, including discrimination on the part of health-care workers and a lack of knowledge about or sensitivity to their needs. In most States they are refused legal recognition of their preferred gender, which leads to grave consequences for the enjoyment of their human

[25] Application No. 18968/07, *V.C. v. Slovakia*, judgement of 8 November 2011.

[26] High Court of Kenya, *Awuor and Ohiele v. Attorney General of Kenya et al.*, judgement of 17 September 2015.

rights, including obstacles to accessing education, employment, health care and other essential services. In States that permit the modification of gender markers on identity documents abusive requirements can be imposed, such as forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures (A/HRC/29/23). Even in places with no legislative requirement, enforced sterilization of individuals seeking gender reassignment is common. These practices are rooted in discrimination on the basis of sexual orientation and gender identity, violate the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture.

50. In many States, children born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization and genital normalizing surgery, which are performed without their informed consent or that of their parents, leaving them with permanent, irreversible infertility, causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants.

E. Rape and sexual violence

51. It is well established that rape and other forms of sexual violence can amount to torture and ill-treatment.[27] Rape constitutes torture when it is carried out by, at the instigation of, or with the consent or acquiescence of public officials (A/HRC/7/3). States are responsible for the acts of private actors when States fail to exercise due diligence to prevent, stop or sanction them, or to provide reparations to victims. In addition to physical trauma, the mental pain and suffering inflicted on victims of rape and other forms of sexual violence is often long-lasting due, inter alia, to subsequent stigmatization and isolation. This is particularly true in cases where the victim is shunned or formally banished from the family or community. Victims can also face difficulties in establishing or maintaining intimate relationships and a variety of other consequences, including sexually transmitted diseases, inability to bear children, unwanted pregnancy, miscarriage and forced or denial of abortion (A/HRC/7/3). Torture and ill-treatment of persons on the basis of actual or perceived sexual orientation or gender identity is rampant in armed conflict and perpetrated by State and non-State actors alike, with rape and other forms of sexual violence sometimes being used as a form of "moral cleansing" of lesbian, gay, bisexual and transgender persons (S/2015/203, A/HRC/25/65).

52. State and non-State actors alike commonly commit acts of sexual violence during international and non-international armed conflicts (S/2015/203). Sexual violence during conflict is often a product of gender stereotypes that are prevalent in societies during peacetime. Rape and other forms of sexual violence constitute violations of international humanitarian law[28] and unequivocally amount to torture under international criminal law jurisprudence.[29] Under international humanitarian law, torture constitutes a breach of the laws and customs of war and may be committed by both States and non-State armed groups. More recent developments in international criminal law have determined that torture can occur when the State had no role in its perpetration and where the State did not

[27] European Court of Human Rights, application No. 39272/98, *M.C. v. Bulgaria*, judgement of 4 December 2003; Inter-American Court of Human Rights, *Ortega et al. vs. Mexico*, judgement of 30 August 2010.

[28] ICRC, "Prevention and criminal repression of rape and other forms of sexual violence during armed conflicts", 11 March 2015.

[29] See, for example, International Criminal Tribunal for Rwanda, case No. ICTR-96-4-T, *Prosecutor v. Akayesu*, judgement of 2 September 1998 and International Criminal Tribunal for the Former Yugoslavia, case No. IT-96-21-Abis, *Prosecutor v. Mucić et al.*, judgement of 8 April 2003.

fail to exercise due diligence obligations, with the "characteristic trait of the offence [being] found in the nature of the act committed rather than in the status of the person who committed it".[30] The Special Rapporteur welcomes these developments and finds that the international humanitarian and criminal law frameworks complement the application of international human rights law, particularly with regard to conflict situations, wherein the control typically exercised by States in peacetime is either lacking or has been replaced by other elements of control, such as insurgent groups or militias.

53. States' due diligence obligations to ensure redress remain intact when non-State actors perpetrate conflict-related sexual violence. Gender-sensitive practices must be employed when investigating violations during and after the armed conflict. Silence or lack of resistance cannot be used to imply consent, which furthermore cannot be inferred from the words or conduct of a victim who was subjected to force, threats, or a coercive environment (A/HRC/7/3). Comprehensive assistance and reparations programmes in these contexts often require years to be fully implemented.

F. Domestic violence

54. It is estimated that 35 per cent of women worldwide have experienced physical or sexual intimate-partner or non-partner violence,[31] with significantly higher figures reported in some States. Women and girls can be victims of specific forms of violence at the hands of their families, for instance in the form of widowhood rites or dowry-related violence, such as bride burnings or acid attacks (A/HRC/20/16). Victims of domestic violence tend to be intimidated by continual threats of physical, sexual or other violence and verbal abuse and may be "effectively manipulated by intermittent kindness" (see E/CN.4/1996/53, para. 47). Fear of further assaults can be sufficiently severe as to cause suffering and anxiety amounting to inhuman treatment.[32]

55. Domestic violence can cause severe physical or mental pain and suffering, constitutes gender discrimination, and is sometimes perpetrated with the purpose of eliciting information, punishment or intimidation (E/CN.4/1996/53). Domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prohibited acts, of which they knew or should have known, in the private sphere (A/HRC/13/39/Add.5). States are internationally responsible for torture when they fail — by indifference, inaction or prosecutorial or judicial passivity — to exercise due diligence to protect against such violence or when they legitimize domestic violence by, for instance, allowing husbands to "chastize" their wives or failing to criminalize marital rape, acts that could constitute torture.

56. Societal indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and patterns of State failure to punish perpetrators and protect victims, create conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist. In this context, State acquiescence in domestic violence can take many forms, some of which may be subtly disguised (A/HRC/7/3). States' condoning of and tolerant attitude towards

[30] See International Criminal Court for the Former Yugoslavia, case No. IT-96-23-T and IT-96-23/1-T, *Prosecutor v. Kunarac et al.*, judgement of 22 February 2001, para. 495; International Criminal Tribunal for Rwanda, case No. ICTR-97-20-T, *Prosecutor v. Semanza*, judgement of 15 May 2003.

[31] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "Facts and figures: ending violence against women".

[32] European Court of Human Rights, application No. 3564/11, *Eremia v. the Republic of Moldova*, judgement of 28 May

domestic violence, as evidenced by discriminatory judicial ineffectiveness, notably a failure to investigate, prosecute and punish perpetrators, can create a climate that is conducive to domestic violence and constitutes an ongoing denial of justice to victims amounting to a continuous human rights violation by the State.[33] In cases where States are or ought to be aware of patterns of continuous and serious abuse in a particular region or community, due diligence obligations require taking reasonable measures to alter outcomes and mitigate harms, ranging from the strengthening of domestic laws and their implementation to effective criminal proceedings and other protective and deterrent measures in individual cases.[34] Domestic violence legislation and community support systems must in turn be matched by adequate enforcement.[35] Special attention must be paid to religious or customary law courts that may tend to downplay and inadequately address domestic violence (A/HRC/29/40).

57. Lesbian, gay, bisexual, transgender and intersex persons are disproportionately subjected to practices that amount to torture and ill-treatment for not conforming to socially constructed gender expectations (A/HRC/22/53). Violence motivated by homophobia and transphobia tends to be characterized by particularly brutal acts, often resulting in murder (A/HRC/19/41). Private actors typically inflict torture and ill-treatment on such persons in a climate of impunity as many States fail in their due diligence obligations to combat, prevent and remedy abuses. Lesbians and transgender women are at particular risk of mistreatment because of gender inequality and power relations within families and communities (ibid.). Sexual violence, including the practice of "corrective rape", uniquely affects lesbian, gay, bisexual, transgender and intersex individuals (CEDAW/C/ZAF/CO/4). Discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons extends into the family sphere and can include placement in psychiatric institutions, forced marriage and honour-based violence (A/HRC/29/23).

G. Harmful practices

58. Harmful practices are persistent practices and forms of behaviour grounded in discrimination on the basis of, inter alia, sex, gender and age, in addition to multiple and intersecting forms of discrimination that often involve violence and cause physical or psychological harm or suffering, including immediate or long-term consequences for the victim's dignity, physical and psychosocial integrity and development, health, education and socioeconomic status.[36] Women and girls are disproportionately impacted by harmful practices. Typically justified on the basis of social norms and cultural beliefs, tradition or religion, harmful practices are motivated in part by stereotypes about sex and gender-based roles and rooted in attempts to control individuals' bodies and sexuality. Female genital mutilation, child and forced marriage and honour-based violence are acknowledged as forms of gender-based violence that constitute ill-treatment and torture. Victims seeking justice for violations of their rights as a result of harmful practices often face stigmatization and risk revictimization, harassment and retribution. States must ensure that the rights of

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[33] Inter-American Commission on Human Rights, case 12.051, *Da Penha Maia Fernandes v. Brazil*, judgement of 16 April 2001.

[34] European Court of Human Rights, application No. 33401/02, *Opuz v. Turkey*, judgement of 9 June 2009.

[35] Committee on the Elimination of Discrimination against Women, communication No. 5/2005, *Goekce v. Austria*, Views adopted on 6 August 2007.

[36] Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices (2014).

women and girls are guaranteed and protected at all stages of the legal processes, inter alia through legal aid, support programmes and witness protection.

1. Honour-based violence

59. Violence committed by family members against relatives in order to protect the family's "honour" is a common practice around the world. In some communities honour is equated with the regulation of female sexuality and with women's conformity with social norms and traditions. Women, girls, and lesbian, gay, bisexual, transgender and intersex persons are the most common victims of honour-based violence, which targets female sexuality and autonomy and individuals' actual or perceived sexual orientation and gender identity and expression (A/61/122/Add.1 and Corr.1).

60. Women and girls tend to be at risk of honour violence or killing for engaging in sexual relations outside of marriage, choosing partners without their family's approval or behaving in other ways that are considered immoral; Lesbian, gay, bisexual, transgender and intersex persons are also targeted (A/HRC/29/23). Honour killings have been documented in South-East Asia, Europe, North America and the Middle East and affect 5,000-12,000 women each year.[37] States' failure to prevent honour-based violence contravenes their obligations to combat and prevent torture and ill-treatment. This includes failure to grant asylum to persons facing the risk of honour violence in their countries of origin.[38]

2. Female genital mutilation

61. Female genital mutilation has severely negative health consequences, including risk of death; has no documented health benefits; causes severe stress and shock, anxiety and depression; and has long-lasting, negative health consequences including higher risks of post-partum haemorrhage and other obstetric complications.

62. The practice constitutes torture or ill-treatment (A/HRC/7/3) and must be prohibited in accordance with, inter alia, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (art. 5). Domestic laws permitting the practice contravene States' obligation to prohibit and prevent torture and ill-treatment, as does States' failure to take measures to prevent and prosecute instances of female genital mutilation by private persons. The tendency towards "medicalization" of female genital mutilation does not in any way make the practice more acceptable. States' indifference or inaction provides a form of encouragement and de facto permission for the practice to take place and go unpunished. The Special Rapporteur notes that in many cases, the perpetrators of female genital mutilation include the victim's parents. In this context, prosecution and the imposition of sanctions, including imprisonment, must result from a nuanced determination that takes into account the best interest of the child.

3. Child and forced marriage

63. A forced marriage occurs without the full and free consent of at least one of the parties or where at least one party is unable to end or leave the marriage, including as a result of duress or intense social or family pressure. Child marriages involve at least one party under 18 years of age. Seven hundred million women alive today were married before the age of 18, and 250 million before the age of 15.[39] These harmful practices occur in

[37] Honour Based Violence Awareness Network, statistics and data.

[38] European Court of Human Rights, application No. 28379/11, *D.N.M. v. Sweden*, judgement of 27 June 2013.

[39] United Nations Children's Fund, *Ending Child Marriage: Progress and Prospects* (2014).

every region in the world, are strongly linked to violence against women and inflict long-term physical and psychological harm on victims. They can legitimize sexual abuse and exploitation; trap women in situations characterized by domestic violence and servitude, marital rape and life-threatening early pregnancies; and affect the victim's capacity to realize the full range of her human rights. (CEDAW/C/MNE/CO/1, CRC/C/MRT/CO/2, A/HRC/26/38/Add.3). Child marriage constitutes torture or ill-treatment (CAT/C/ETH/CO/1), particularly where Governments fail to establish a minimum age for marriage that complies with international standards or allow child marriage despite the existence of laws setting the age of majority at 18 (CAT/C/YEM/CO/2/Rev.1, CCPR/C/BGR/CO/3), to criminalize forced marriage and to investigate, prosecute and punish perpetrators.

64. Child and other forms of forced marriage increase during conflict and among displaced populations living in refugee or internally displaced persons camps. In 2015 the practice has been documented as being enforced by both State actors and non-State or rebel factions in Iraq, Nigeria, Somalia, the Syrian Arab Republic and elsewhere, with victims being repeatedly raped, compelled to carry multiple pregnancies and subjected to other forms of physical and psychological violence over prolonged periods. While rape commonly occurs in the context of forced marriage, girls and women can also be forced into marriage as a consequence of rape or fear of sexual violence, as a form of "restitution" or "reparation". Like rape, forced marriage is used as a tactic of war and to fulfil strategic objectives such as domination, intimidation and degradation. It has been recognized as a crime against humanity by the Special Court for Sierra Leone.[40]

H. Access to justice and reparations

65. Victims of gender-based violence face significant hurdles in accessing justice and reparations, including absence of or shortcomings in domestic legal frameworks to hold perpetrators accountable, and practical obstacles such as the significant expense involved in accessing courts. Stigma can be a factor associated with gender-based crimes, and victims may fear rejection by families and communities and encounter personnel who are not properly trained to respond to their needs. All victims must be granted access to effective judicial and administrative remedies. This entails the dismantling of discriminatory barriers and the provision of support to victims at all stages of the legal process.

66. Reparations must be premised on a full understanding of the gendered nature and consequences of the harm suffered and take existing gender inequalities into account to ensure that they are not themselves discriminatory (see A/HRC/14/22, para. 32). They must address the context of structural discrimination in which violations occurred and aim to provide both restitution and rectification.[41] Reparations must have a transformative impact, addressing the underlying causes and consequences of violations, and offer continued protection for and respectful engagement with victims (A/HRC/14/22). As stipulated in the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, victims must be empowered to help determine what forms of reparation are best suited to their situation.

67. Adequate redress requires States to investigate, prosecute and punish perpetrators and inform the public of results. States must ensure that judicial procedures and rules of evidence are gender responsive; that equal weight is afforded to the testimony of women,

[40] Case No. SCSL-2004-16-A, *Prosecutor v. Brima et al.*, judgement of 22 February 2008.

[41] Inter-American Court of Human Rights, *Case of González et al. ("Cotton Field") v. Mexico*, judgement of 16 November 2009.

girls, and lesbian, gay, bisexual, transgender and intersex persons; and that the introduction of discriminatory evidence and the harassment of victims and witnesses are strictly prohibited.[42] The standards established by international courts should serve as an example for domestic courts to follow, for instance by implementing institutional gender-balance requirements and prohibiting the admission of evidence regarding the victims' prior sexual conduct in cases of sexual, domestic and other gender-based violence.

IV. Conclusions and recommendations

68. **States have a heightened obligation to prevent and combat gender-based violence and discrimination against women, girls, and lesbian, gay, bisexual, transgender and intersex persons that amount to torture and ill-treatment, committed in a variety of contexts by both State and actors. In assessing the level of pain and suffering experienced by victims of gender-based violence, States must examine the totality of the circumstances, including the victim's social status; extant discriminatory legal, normative and institutional frameworks that reinforce gender stereotypes and exacerbate harm; and the long-term impact on victims' physical and psychological well-being, enjoyment of other human rights and their ability to pursue life goals. The provision of comprehensive reparations, including monetary compensation, rehabilitation, satisfaction and guarantees of non-repetition, is essential and must be accompanied by diverse measures and reforms designed to combat inequality and legal, structural and socioeconomic conditions that perpetuate gender-based discrimination. Urgent interim reparations designed to respond to the immediate needs of victims of gender-based violence, including rehabilitation and access to physical and mental health care, should also be provided where necessary.**

69. **States must repeal all laws that support the discriminatory and patriarchal oppression of women, inter alia laws that exclude marital rape from the crime of rape or grant pardon to rapists who marry their victims and laws that criminalize adultery. In addition, States must decriminalize same-sex relationships between consenting adults and repeal all laws that criminalize persons on the basis of their actual or perceived sexual orientation or gender identity or expression. Comprehensive, coordinated policies and programmes to combat gender-based discrimination and violence, inclusive of gender-sensitive trainings of public officials and the implementation of public education and awareness campaigns, must be developed and implemented at all levels.**

70. **With regard to women, girls, and lesbian, gay, bisexual and transgender persons in detention, the Special Rapporteur calls on all States to:**

(a) Fully and expeditiously implement the Bangkok Rules and establish appropriate gender-specific conditions of detention;

(b) Use pretrial detention as a means of last resort in accordance with the Tokyo Rules and prioritize the use of alternative measures, such as release on bail or personal recognizance;

(c) Guarantee the right to effective assistance of counsel, including by means of a legal aid system, and the right to appeal decisions to a judicial or other competent independent authority, without discrimination;

[42] Committee against Torture, general comment No. 3 (2012) on implementation of article 14 by States parties.

(d) Review laws, criminal procedures and judicial practices to ensure that they take full account of women's backgrounds, including histories of prior abuse, mental health problems and substance abuse, and parental and other caretaker responsibilities in the allocation of sentences and sentence planning;

(e) Divert women and girls away from the criminal justice system and towards appropriate services and programmes, whenever appropriate, and implement alternatives to detention such as absolute or conditional discharge, verbal sanctions, arbitrated settlements, restitution to the victim or a compensation order, community service orders, victim-offender mediation, family group conferences, sentencing circles, drug rehabilitation programmes and other restorative processes, services and programmes;

(f) Provide for non-custodial means of protection, such as shelters and other community-based alternatives, and guarantee that the placement of women in detention centres for protection — only where necessary and expressly requested by the woman in question — will be temporary, subject to supervision and competent authorities and never continued against their will;

(g) Ensure that male and female detainees are separated, including during transport; that female detainees are supervised and attended to only by female staff; and that escorts of female prisoners at least include female officers;

(h) Immediately cease the practice of shackling and handcuffing of pregnant women and women in labour and of women immediately after childbirth;

(i) Absolutely prohibit the use of solitary confinement on pregnant and breastfeeding women, mothers with young children, women suffering from mental or physical disabilities and girls under 18 years of age and as a measure of "protection";

(j) Ensure that strip and invasive body searches are conducted only when necessary and appropriate, by staff of the same gender with sufficient medical knowledge and skill to perform the search safely and respect the individual's privacy and dignity and in two steps (to ensure that the detainee is never fully unclothed), and to prohibit body searches of females by male staff;

(k) Account for women's gender-specific health-care needs and provide individualized primary and specialist care, including comprehensive and detailed screenings and prerelease preparations, in a holistic and humane manner, in line with the Bangkok Rules; provide preventive and gender-sensitive care designed to safeguard women's privacy and dignity, including as regards mental health, sexual and reproductive health, HIV prevention and treatment and substance abuse treatment and rehabilitation programmes; and ensure that female detainees are examined and treated by female health-care professionals if they so request, except in emergency situations, when female staff should be present;

(l) Ensure adequate sanitation standards and provide for facilities and materials that meet women's specific hygiene needs, such as sanitary towels at no cost, and clean water, including during transport;

(m) Prohibit forced and coerced pregnancy tests and obtain full, free and informed consent for such tests, and prohibit virginity testing under all circumstances;

(n) Consider the imprisonment of pregnant women and women with young children only when other alternatives are unavoidable or unsuitable; ensure that sentencing policies and practices respect the best interests of the child, including the need to maintain direct contact with mothers; assist female offenders with tools to

carry out child-rearing responsibilities and make special provisions for mothers prior to admission to allow for alternative childcare arrangements; and allow children to maintain personal relations and direct contact with mothers in detention;

(o) When the detention of children with their mothers in prison is unavoidable,implement effective safeguards, including regular monitoring and review of every case to ensure that the children are never treated like prisoners; ensure that the full range of the children's needs, whether medical, physical, psychological or educational, including living conditions that are adequate for a child's development, are guaranteed in practice;

(p) When the detention of girls is unavoidable, design and implement distinct, child-centred policies and practices, inclusive of properly trained and sensitized personnel; and ensure the provision of comprehensive assistance, protection and services, including by the development of specialized child and gender units designed to address the special needs of girls in detention;

(q) Ensure that migrants, refugees and asylum seekers are individually assessed, including with respect to their need for protection, and that adequate screening and assessment procedures are in place to identify victims of torture and ill-treatment; provide opportunities for safe, voluntary and dignified disclosure of lesbian, gay, bisexual, transgender and intersex status; and ensure that measures taken by migration authorities do not retraumatize victims;

(r) In the context of administrative enforcement of immigration policies, ensure that detention is used only as a last resort and in exceptional circumstances; and comply with the absolute prohibition of refoulement at all times, with special attention to prospective situations of gender-based discrimination and violence that women, girls, and lesbian, gay, bisexual, transgender and intersex persons may face;

(s) Take individuals' gender identity and choice into account prior to placement and provide opportunities to appeal placement decisions;

(t) Ensure that protective measures do not involve the imposition of more restrictive conditions on lesbian, gay, bisexual, transgender and intersex persons than on other detainees;

(u) Guarantee all transgender detainees the choice of being searched by male or female officers;

(v) Ensure the physical and mental integrity of detainees at all times and prevent, investigate, prosecute and punish all acts of violence, harassment and abuse by staff members or other prisoners, at all times;

(w) Set up operational protocols, codes of conduct, regulations and training modules for the ongoing monitoring and analysis of discrimination against women, girls, and lesbian, gay, bisexual and transgender persons with regard to access to all services and rehabilitation programmes in detention; and document, investigate, sanction and redress complaints of imbalance and direct or indirect discrimination in accessing services and complaint mechanisms;

(x) Monitor and supervise all places of detention in a gender-sensitive manner and ensure that allegations of abuse are effectively investigated and perpetrators brought to justice; and ensure the availability of adequate, speedy and confidential complaint mechanisms in all places of detention;

(y) Ensure that all places of detention are subjected to effective oversight and inspection and unannounced visits by independent bodies established in conformity with the Optional Protocol to the Convention against Torture, as well as

by civil society monitors; and ensure the inclusion of women and lesbian, gay, bisexual and transgender persons and other minority representation on monitoring bodies;

(z) Undertake specific training and capacity-building programmes designed to sensitize law enforcement authorities and detention facility staff to the specific circumstances and unique needs of female and lesbian, gay, bisexual and transgender prisoners and standards such as the Bangkok Rules.

71. With regard to trafficking, the Special Rapporteur calls upon States to ensure that appropriate frameworks are in place for the identification, investigation and prosecution of trafficking-related human rights violations; duly investigate, prosecute and punish public officials for their role in trafficking operations; establish a combination of comprehensive gender- and age-sensitive measures to protect, support and rehabilitate victims; and avoid detention of victims for status-related offences and for "protective" purposes.

72. With regard to abuses in health-care settings, the Special Rapporteur calls upon States to:

(a) Take concrete measures to establish legal and policy frameworks that effectively enable women and girls to assert their right to access reproductive health services;

(b) Decriminalize abortion and ensure access to legal and safe abortions, at a minimum in cases of rape, incest and severe or fatal fetal impairment and where the life or physical or mental health of the mother is at risk;

(c) Set forth clear guidance on implementing domestic abortion legislation and ensure that it is interpreted broadly; and monitor the practical implementation of legislation to ensure that persons are provided the right to legal services in practice;

(d) Guarantee immediate and unconditional treatment of persons seeking emergency medical care, including as a result of illegal abortion;

(e) Outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups; and ensure that health-care providers obtain free, full and informed consent for such procedures and fully explain the risks, benefits and alternatives in a comprehensible format, without resorting to threats or inducements, in every case;

(f) Effectively monitor and regulate practices by public and private actors in health-care and educational settings to ensure the eradication of prohibited practices including, inter alia, the denial of maternal health care and compulsory medical examinations such as forced pregnancy and virginity testing, and investigate, prosecute and punish perpetrators;

(g) Undertake appropriate training sessions and community-level gender-sensitization campaigns to combat discriminatory gender stereotypes underlying discrimination and abuses in the provision of health-care services to women, girls, and lesbian, gay, bisexual, transgender and intersex persons;

(h) Adopt transparent and accessible legal gender recognition procedures and abolish requirements for sterilization and other harmful procedures as preconditions;

(i) Repeal laws that allow intrusive and irreversible treatments of lesbian, gay, bisexual, transgender and intersex persons, including, *inter alia*, genital-normalizing surgeries and "reparative" or "conversion" therapies, whenever they are

enforced or administered without the free and informed consent of the person concerned;

(j) Prohibit and prevent the discriminatory denial of medical care and of pain relief, including HIV treatment, to lesbian, gay, bisexual, transgender and intersex persons.

73. **With regard to domestic and private-actor violence against women, girls, and lesbian, gay, bisexual, transgender and intersex persons, the Special Rapporteur calls upon States to:**

(a) Repeal or reform civil laws that restrict women's access to divorce, property and inheritance rights and that subjugate women and limit their ability to escape situations of domestic and other gender-based violence;

(b) Dismantle legal and practical barriers to initiating legal proceedings and reform judicial systems and procedures to permit women to obtain protective measures, including, *inter alia*, restraining and protective orders, witness protection programmes and other measures designed to combat harassment and retaliation;

(c) Provide community support programmes and services, including shelters, to victims and their dependents;

(d) Enact legislation that prohibits discrimination by public actors and private parties, including hate crime laws that sanction homophobic and transphobic violence; ensure that appropriate laws apply to all persons equally, regardless of real or perceived sexual orientation and gender identity; and implement effective complaint and enforcement procedures and systems for quantifying prohibited acts.

74. **With regard to harmful practices, the Special Rapporteur calls upon States to:**

(a) Remove the defence of "honour" and other mitigating factors in prosecuting victims' relatives; and engage in community outreach and public education campaigns to raise public awareness about honour-based crimes;

(b) Implement legislation that prohibits all forms of female genital mutilation at all levels, including in State-run and private medical facilities; prosecute and hold accountable health-care professionals, community leaders and other public officials who perpetrate or condone the practice or refuse to implement relevant laws; and concomitantly raise awareness and mobilize public opinion against female genital mutilation through community-based programmes and educational campaigns;

(c) Implement and enforce uniform laws that prohibit child marriage before the age of 18, with no exceptions on the basis of parental consent or personal status laws; extend the prohibition to cover traditional and religious marriages; provide appropriate assistance to women and girls living in forced marriages, including by helping women leave the marriage with a share of matrimonial assets, custody of children and the right to remarry; and provide support to victims' dependents and members of immediate families;

(d) Ensure that victims of honour-based violence have equal access to justice and remedies, including appropriate long-term social, psychological, medical and other appropriate specialized rehabilitation measures.